

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of the Commission's
Rules to Require Quality of Service
Standards in Local Exchange Carrier
Tariffs

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) RM 7967
) AAD 92-39
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Reply Comments of the NYNEX Telephone Companies

New York Telephone and New England Telephone and Telegraph Company (NYNEX Telephone Companies or NTCs) submit the following in reply to the comments filed on June 22, 1992 in this proceeding. The NTCs address Tele-Communications Association's (TCA) attempt to expand the April 6, 1992 Joint Petition filed by International Communications Association (ICA) and Consumer Federation of America (CFA) by including additional quality of service standards in local exchange carrier (LEC) tariffs, and by adopting semi-annual "report cards" to disclose LEC performance.

The NTCs also take exception to the comments of The Independent Data Communications Manufacturers Association, Inc. (IDCMA) and The Information Technology Association of America (ITAA) that competition in the LEC marketplace is non-existent and, that without market discipline, LECs lack an incentive to provide quality service.

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List A B C D E

I. COMMENTS SUPPORTING THE PETITION DO NOT PRESENT ANY EVIDENCE WARRANTING THE DUPLICATIVE PROCEEDING.

As the NTCs stated in their comments¹ and as the comments of other parties stress,² the proposed rulemaking would be a waste of administrative resources. The rulemaking would revisit issues that the Commission has examined, reexamined and settled.³ The Commission has concluded that the burdens of requiring LECs to include their internal service quality standards in their tariffs outweigh the dubious benefits of the proposal.⁴ Comments supporting the request for a rulemaking, like the Joint Petition itself, do not present any newly discovered facts or changed circumstances that would warrant reconsideration of the Commission's conclusion.

1 Comments of the NYNEX Telephone Companies (NYNEX Comments) at 3-4.

2 See, e.g., Comments of the Ameritech Operating Company (Ameritech Comments) at 5; Comments of BellSouth Corporation (BellSouth Comments) at 7; Comments of Pacific Bell and Nevada Bell (Pacific Comments) at 9; Comments of Rochester Telephone Corporation (Rochester Comments) at 7; and Comments of Southwestern Bell Telephone Company (SWBT Comments) at 4-5.

3 NYNEX Comments at 2, n. 2.

4 Second Report and Order, CC Docket No. 87-313, 5 FCC Rcd 67-86, 6830, para. 358 (1990) (LEC Price Cap Order); Memorandum Opinion and Order, CC Docket No. 87-313, DA 91-619, 6 FCC Rcd 2974, 2991, para. 44 (Com. Car. Bur. 1991) (Bureau Memorandum Opinion & Order). The NTCs agree with MCI's astute observation that the benefits discussed by the Joint Petition "understate the ability of business consumers to rectify perceived lack of service standards and overstate the ability of residential consumers to benefit from such published standards." Comments of MCI Communications Corp. (MCI Comments) at 4-5.

As the comments opposing the Joint Petition point out, the information on which the Joint Petition hangs its hopes (i.e., internal service quality standards, which LECs submitted in response to a House Subcommittee questionnaire) is not only publicly available, but was expressly considered by the Commission for inclusion in LEC tariffs, and rejected.

If the Joint Petitioners, and others supporting their request for a rulemaking, are dissatisfied with the Commission's decision, they have other means to seek review. Indeed, TCA filed an application for review in which Petitioner ICA joined. But more importantly, as MCI pointed out in its comments,⁵ the Commission indicated that if evidence suggests that service quality is deteriorating despite its comprehensive service quality monitoring regime, then the Commission is prepared to use its authority to impose specific standards.⁶ Petitioners have made no such showing.

In any event, the NTCs join MCI and US West in recommending that rather than waste energy in a splintered proceeding, to the extent the issues raised by the Joint Petition have merit -- which in the view of the NTCs they do not -- it would be more appropriate to address these issues in the upcoming comprehensive LEC price cap review.

⁵ MCI Comments at 2-4.

⁶ Order on Reconsideration, CC Docket No. 87-313, 6 FCC Rcd 2637, 2725-26, para. 192 (1991).

II. GRANTING THE PETITION RISKS REOPENING A BROAD RANGE OF ISSUES.

TCA's comments, which seek to expand the scope of the Joint Petition, provide further evidence that the Commission would be ill-advised in granting the request for a rulemaking.⁷ TCA would broaden the rulemaking to consider requiring LECs to include in their tariffs installation and repair intervals for all services, and error-free seconds for digital services. As with the service quality categories raised by the Joint Petition, the additional categories suggested by TCA have already been considered by the Commission and rejected.⁸

TCA would further expand the rulemaking sought by the Joint Petition to include consideration of a performance-based semi-annual "report card."⁹ The report card is merely a repackaged attempt to edge toward national standards. The same logic that led the Common Carrier Bureau to reject tariff listing of internal service quality standards applies here. The performance levels reported would undoubtedly be challenged, leading to an expectation that the Commission would rule on their acceptability and, thus, would be "tantamount to

⁷ TCA Comments at 5-6.

⁸ See TCA Petition for Reconsideration, CC Docket 87-313, November 19, 1990, at 18-21; TCA Comments, CC Docket 87-313, April 10, 1991, at 8; TCA Reply Comments, CC Docket 87-313, April 25, 1991, at 12.

⁹ TCA Comments at 5-7.

establishing national standards."¹⁰ The Commission has thoroughly and repeatedly considered, and rejected the call for national standards.¹¹

Further, as the NTCs and others noted in their comments, large users are sophisticated enough to examine existing available information, such as technical reference documents that contain service standards, to determine if they are getting what they are paying for. These users do not need a report card from the LECs to tell them what kind of service they are getting.

TCA's comments demonstrate that granting the Petition is like admitting the nose of the camel. Once the tent flap is open, there is no controlling what comes in after. The proposed rulemaking risks reopening the panoply of issues the Commission settled after considerable deliberation in the service quality docket. Even the Joint Petitioners admitted the need to limit the scope of their petition when they stated "thus, matters such as switched network outages, emergency procedures, and repair intervals, all of which are very important ... are not raised directly by this petition".¹²

10 Bureau Memorandum Opinion and Order, 6 FCC Rcd at 2991, para. 44.

11 Price Cap Order, 5 FCC Rcd at 6830, para. 358; Order on Reconsideration, CC Docket No. 87-313, 6 FCC Rcd 2637, 2725-26, para. 192 (1991).

12 Joint Petition at 3.

III. AS THE COMMISSION FORESAW, COMPETITION IS ASSURING HIGH SERVICE STANDARDS.

The comments of IDCMA and ITAA suggest that there is no competition in the local exchange market and, for that reason, LECs do not pay much attention to the quality of service of their customers.¹³ The comments of the NTCs and other parties refute this assertion. The data reflect the entrance of competition and its concrete effects in the form of LEC loss of market share to Competitive Access Providers (CAPs).¹⁴

The NTCs especially take issue with IDCMA's allegation that LECs have "engaged in strategic pricing, overcharging for certain high-capacity services to depress demand for efficiency-enhancing approaches to information transport."¹⁵ When the Commission initiated its price cap regime, the NTCs' rates for high capacity services were within the crossover guidelines established by the Commission in its Strategic Pricing Order.¹⁶ Since that time, competition has

13 See IDCMA Comments at 3-4; ITAA Comments at 2-3.

14 See NYNEX Comments at 12-14 (citing an independent study reporting that approximately 30 CAPS were expected to be operating in approximately 60 cities by the end of 1991, and a NYNEX commissioned study showing that New York Telephone's share of the Manhattan large business market for premises to POP services is approximately 64%, while Teleport Communications alone has achieved a 26% share).

15 IDCMA Comments at 3.

16 Order on Reconsideration, In the Matter of Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase II, Part I, Para. 73, Released January 19, 1990.

intensified and has exerted downward pressure on the NTCs' rates for high capacity services. Competition, together with the pricing constraints in the Commission's price cap rules, has made "strategic pricing" a moot issue.

IDCMA's other allegations are equally baseless. IDCMA, for example, accuses the LECs of not showing "much eagerness for improved regulatory oversight of the quality of services they do offer."¹⁷ IDCMA ignores such industry initiatives as internetwork testing, and the industry's cooperative efforts in the Network Reliability Council.

As the Commission foresaw when considering service quality issues in its price cap proceedings,¹⁸ increased competition in the local exchange market is assuring high service standards. Neither the Joint Petition nor the comments filed in support of it offer any evidence to the contrary. There is therefore, no reason to revisit the issue.

¹⁷ IDCMA Comments at 4.

¹⁸ LEC Price Cap Order, 5 FCC Rcd at 6830, para. 355.

IV. CONCLUSION

The comments filed in support of the rulemaking proposed by the Joint Petition underscore the conclusion that the request for a rulemaking should not be granted.

Supporters, such as TCA, want to use the Joint Petition to examine de novo service quality issues that the Commission settled in its extensive price cap proceeding. Petitioners and their supporters have failed to provide any evidence to justify why the Commission should reconsider its conclusions and engage in a redundant and distractive proceeding.

Respectfully submitted,

New England Telephone and
Telegraph Company and
New York Telephone Company

By: 

Mary McDermott
Carlos J. Sandoval

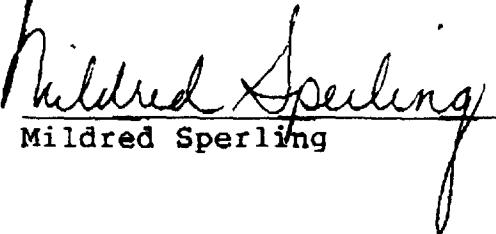
120 Bloomingdale Road
White Plains, New York 10605
(914) 644-2030

Their Attorneys

Dated: July 13, 1992

CERTIFICATE OF SERVICE

I certify that copies of the foregoing REPLY COMMENTS OF THE NYNEX TELEPHONE COMPANIES were served on each of the persons listed on the attached Service List, this 13th day of July, 1992, by first class United States mail, postage prepaid.


Mildred Sperling

SERVICE LIST
RM-7967 AAD 92-39

Brian R. Moir
Fisher, Wayland, Cooper & Leader
Suite 800
1255r 23rd Street, N.W.
Washington, D.C. 20037-1170

Richard McKenna HQE03J36
GTE Service Corporation
P.o. Box 152092
Irving, TX 75015-2092

Gene Kimmelman
Suite 604
1424 16th Street, N.W.
Washinton, D.C. 20036

Gail L. Polivy, Esq.
Counsel For: GTE Service Corporation
1850 M Street, NW
Suite 1200
Washington, DC 20036

Floyd S. Keene
Michael S. Pabian
Attorneys for the
Ameritech Operating Companies
Room 4H76
2000 West Ameritech Center Drive
Hoffman Estates, IL. 60196-1025

James L. Casserly, Esq.
Counsel For: Independent Data
Communications Manufacturers Assoc. Inc.
Squire, Sanders & Dempsey
1201 Pennsylvania Ave., N.W.
P.O. Box 407
Washington, D.C. 20044

Charles H. Kennedy
Michael D. Lowe
Attorney Bell Atlantic
1710 H Street, N.W.
Washington, D.C. 2006

David Alan Nall, Esq.
Counsel For: Information Technology
Association of America
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044

William B. Barfield
A. Kirven Gilbert III
BELLSOUTH CORPORATION
1155 Peachtree Street, N.E.
Suite 1800
Atlanta, Georgia 30367-6000

Michael F. Hydock
Senior Staff Member
MCI Telecommunications Corporation
1801 Pennsylvania Ave., NW
Washington, DC 20006

James P. Tuthill
Lucille M. Mates
Pacific Bell
Nevada Bell
140 New Montgomery Street
Room 1526
San Francisco, California 94105

Lawrence E. Sarjeant
James T. Hannon
U S West Communications, Inc.
1020 19th Street, N.W.
Suite 700
Washington, D.C. 200036

Michael J. Shortley, III, Esq.
Rochester Telephone Corporation
180 South Clinton Avenue
Rochester, New York 14646

Jay C. Keithley, Esq.
United Telephone Companies
1850 M Street N.W.
Suite 1100
Washington, D.C. 20036

Durward D. Dupre
Richard C. Hartgrove
Thomas A. Pajda
Southwestern Bell Telephone Company
1010 Pine Street, Room 2114
St. Louis, Missouri 63102

W. Richard Morris, Esq.
Counsel For: United Telephone Companies
P.O. Box 11315
Kansas City, MO 64112

R. Michael Senkowski
Jeffrey S. Linder
Tele-Communications Association
1776 K Street, N.W.
Washington, D.C. 20006

Martin T. McCue
Vice President and General Counsel
United States Telephone Association
900 19th Street NW
Suite 800
Washington, DC 20006-2105